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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10                  NAVIGANT CONSULTING, INC.,

CASE NO. C18-1154JLR

11                  Plaintiff,

ORDER GRANTING MOTION  
12                  v.  
13                  MILLIMAN, INC., et al.,  
14                  Defendants.

15                   **I. INTRODUCTION**

16       Before the court are Plaintiff Navigant Consulting, Inc.’s (“Navigant”) motion for  
17       a temporary restraining order (“TRO”) and motion for expedited discovery and  
18       preservation of evidence. (*See* TRO Mot. (Dkt. # 9); Disc. Mot. (Dkt. # 11).) Navigant  
19       requests that the court enter a TRO precluding Defendants Milliman, Inc. (“Milliman”)  
20       and James Pettersson (collectively, “Defendants”) from soliciting any Navigant  
21       employees to terminate their employment with Navigant; soliciting any clients or  
22       prospective clients of Navigant’s; and using or disclosing any of Navigant’s confidential

1 and/or trade secret information. (See TRO Mot. at 1.) The court has considered  
2 Navigant's motion, the attached declarations and exhibits, the relevant portions of the  
3 record, and the applicable law. Being fully advised,<sup>1</sup> the court GRANTS the motion for a  
4 TRO and RESTRAINS Defendants from soliciting Navigant employees or clients and  
5 from using or disclosing Navigant's confidential information. The court further  
6 GRANTS IN PART the motion for expedited discovery that calls for preservation of  
7 evidence but RESERVES the remainder of the motion for argument at the preliminary  
8 injunction hearing.

## II. BACKGROUND

Navigant is a professional services firm that provides consulting services to clients in the healthcare, energy, and financial services industries. (Compl. (Dkt. # 1) ¶ 12.) Navigant filed this action on August 7, 2018, against former employee Mr. Pettersson and his new employer, Milliman. (*See id.*) Navigant asserts breach of contract and breach of loyalty claims against Mr. Pettersson (*id.* ¶¶ 61-81), misappropriation of trade secrets claims against Mr. Pettersson and Milliman (*id.* ¶¶ 82-98), and a tortious interference claim against Milliman (*id.* ¶¶ 99-105). Navigant seeks to enjoin Defendants from utilizing Navigant’s confidential information and soliciting Navigant’s clients and employees. (*Id.* ¶¶ A-C.) Moreover, Navigant seeks injunctive relief ordering Defendants to return all devices that contain Navigant’s confidential information. (*Id.* ¶ D.) Finally, Navigant seeks compensatory and punitive damages. (*Id.* ¶ F-G.)

<sup>1</sup> Defendants have not replied to the motion, but the court finds it appropriate to issue the TRO without first considering a response from Defendants. *See infra* § III.

1       The dispute stems from Mr. Pettersson's employment with Navigant as a  
2 Managing Director in the firm's Government Rate Setting group. (*Id.* ¶ 24.) In that role,  
3 Mr. Pettersson oversaw a team of 15 to 20 employees who worked on client accounts  
4 generating millions of dollars in revenues annually. (*Id.* ¶ 25.) Upon being hired, Mr.  
5 Pettersson signed an agreement regarding Navigant's confidential information and non-  
6 solicitation policies ("the Agreement"). (*Id.* ¶ 27; *see also id.*, Ex. 1 ("Agreement").)  
7 The Agreement contained the following provisions on confidential information and  
8 solicitation of employees and clients:

9       *Confidentiality Obligations.* During and after my employment with  
10 [Navigant], I will not (a) disclose, directly or indirectly, any Confidential  
11 Information to anyone outside of [Navigant] . . . or (b) use any Confidential  
12 Information other than as may be necessary to perform my duties at  
[Navigant]. . . . [I]n no event will I disclose any Confidential Information to,  
or use any Confidential Information for the benefit of, any current or future  
competitor . . . on behalf of myself, any subsequent employer, or any other  
person or entity.

13       . . .  
14       Non-Solicitation of Employees. While employed by [Navigant] and for a  
15 period of twelve (12) months from the date of termination of my employment  
with [Navigant] for any reason, I shall not directly or indirectly retain any of  
[Navigant's] employees, nor shall I solicit, induce or encourage any of  
[Navigant's] employee(s) to terminate their employment with [Navigant] or  
to accept employment with any competitor . . . of [Navigant], nor shall I  
cooperate with any others in doing or attempting to do so.

17       . . .  
18       Non-Solicitation of Customers. While employed by [Navigant] and for a  
19 period of twelve (12) months from the date of termination of my employment  
with [Navigant] for any reasons, I agree that I will not, either directly or  
indirectly . . . solicit any client which was a client, or a prospective client, of  
[Navigant] . . . within the twelve (12) months immediately preceding my  
termination, to become a client of a business that is competitive with the  
business engaged in by [Navigant].

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1 (Compl. ¶¶ 29, 31; Agreement ¶¶ 5, 10 (italics and underlining in original).)

2 “Confidential Information” is defined by the Agreement as “all information that

3 [Navigant] desires to protect and keep confidential or that [Navigant] is obligated to third

4 parties to keep confidential, including but not limited to ‘Trade Secrets’ to the full extent

5 of the definition of that term under Illinois law.” (Agreement ¶ 2.)

6 On May 14, 2018, Mr. Pettersson notified Navigant in writing that he was

7 resigning. (Compl. ¶ 34.) The next day, Mr. Pettersson asked Navigant to “sell him the

8 Government Rate Setting business,” suggesting that “other key employees would be

9 leaving with [him] and the departures would significantly jeopardize the Government

10 Rate Setting [group’s] existence.” (*Id.* ¶ 35.) Navigant declined and subsequently

11 decided to promote Ben Mori, who previously reported directly to Mr. Pettersson, to lead

12 the group. (*See id.* ¶¶ 38-39.) Although Mr. Mori initially expressed excitement about

13 the promotion, he resigned less than a week later. (*Id.* ¶¶ 40-41.) He now allegedly

14 works at Milliman. (*See id.* ¶ 52.) Navigant next approached Luke Roth to appoint him

15 leader of the group. (*Id.* ¶ 43.) Like Mr. Mori, Mr. Roth initially agreed but later

16 resigned from Navigant to join Mr. Pettersson at Milliman. (*Id.* ¶ 43; Bajner Decl. (Dkt.

17 # 10) ¶ 41.) Mr. Pettersson, who is starting a Government Rate Setting group at

18 Milliman, has also allegedly solicited other key Navigant employees to join Milliman.

19 (Compl. ¶ 45; Bajner Decl. ¶¶ 39-40.)

20 After those events, Navigant discovered additional alleged misconduct on the part

21 of Mr. Pettersson. Navigant examined of Mr. Pettersson’s emails, which revealed that he

22 had sent confidential information to his personal email account, including confidential

1 client work product, communications with clients, and information regarding current and  
2 potential employees. (Compl. ¶ 48; Bajner Decl. ¶ 42.) Further forensic examination  
3 showed that on his last day at Navigant, Mr. Pettersson inserted two USB storage devices  
4 into his computer and deleted over 100 documents and files related to Navigant  
5 employees and clients. (Compl. ¶ 54; Bajner Decl. ¶ 48.) Mr. Pettersson additionally  
6 accessed a Google Drive cloud-based storage account from his work computer after  
7 providing notice of his resignation. (Compl. ¶ 55.)

The court now considers Navigant's motions.

### III. ANALYSIS

Federal Rule of Civil Procedure 65 empowers the court to issue a TRO. Fed. R. Civ. P. 65. A plaintiff seeking a TRO in federal court must meet the standards for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Accordingly, Navigant must establish that (1) it is likely to succeed on the merits of its claims, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).<sup>2</sup>

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<sup>2</sup> Although the court need not reach this basis for relief here, a preliminary injunction is also “appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor,” provided the plaintiff also demonstrates that irreparable harm is likely and that the injunction is in the public interest. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

1 Navigant's motion and the evidence submitted therewith establishes the *Winter*  
2 requirements. First, Navigant demonstrates that it is likely to succeed on at least two of  
3 its claims—breach of contract and misappropriation of trade secrets.<sup>3</sup> For its breach of  
4 contract claim, Navigant must demonstrate (1) the existence of a valid and enforceable  
5 contract; (2) performance by the plaintiff; (3) breach of the contract by the defendant; and  
6 (4) resulting injury to the plaintiff. *See Kamboy v. Eli Lilly & Co.*, No. 05C4023, 2007  
7 WL 178434, at \*5 (N.D. Ill. Jan. 18, 2007).<sup>4</sup> Navigant proffers evidence that the  
8 restrictive covenants in the Agreement are reasonable and accordingly, that the  
9 Agreement is a valid and enforceable contract that may be enforced through injunction.  
10 *See Lifetec, Inc. v. Edwards*, 880 N.E. 2d 188, 195 (Ill. App. Ct. 2007). Not only does  
11 the Agreement protect the legitimate business interest of preserving Navigant's  
12 proprietary materials, customer relationships, and workforce, *see id.* at 196-97 (finding a  
13 legitimate business interest in confidential information and customer relationships);  
14 *Arpac Corp. v. Murray*, 589 N.E. 2d 640, 249-50 (Ill. App. Ct. 1992) (finding the  
15 maintenance of a "stable workforce" to be a legitimate business interest), but its one-year  
16 restrictions are also reasonable, *see Arpac Corp.*, 589 N.E. 2d at 250 (finding a five-year  
17 restriction reasonable). Navigant also provides evidence of Mr. Pettersson's violation of  
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19 <sup>3</sup> Because those two claims support granting a TRO—namely, restraining Defendants  
20 from utilizing Navigant's confidential information and soliciting Navigant's employees and  
21 clients—the court does not address Navigant's likelihood of success on its tortious interference  
claim. *See Power Balance LLC v. Power Force LLC*, No. SACV 10-1726 AG (MLGx), 2010  
WL 5174957, at \*2 (C.D. Cal. Dec. 14, 2010) ("A party seeking an injunction need not  
demonstrate likelihood of success on the merits of all claims.").

22 <sup>4</sup> The Agreement provides for the application of Illinois law. (Agreement ¶ 26.)

1 the Agreement, namely his solicitation of Navigant employees and the confidential client  
2 information that Mr. Pettersson took with him to Milliman. (See Bajner Decl. ¶¶ 40-43,  
3 48-49.) Thus, the court concludes that Navigant demonstrates a likelihood of success on  
4 its breach of contract claim.

5 Navigant also demonstrates a likelihood of success on its misappropriation of  
6 trade secrets claim. Navigant's Government Rate Setting client information, pricing,  
7 strategic business and marking plans, and other information qualify as trade secrets. See  
8 *Earthbound Corp. v. MiTek USA, Inc.*, No. C16-1150RSM, 2016 WL 4418013, at \*9-10  
9 (W.D. Wash. Aug. 19, 2016) (stating that "current and prospective customers, pending  
10 projects, bids, pricing, product design, and other elements of [the plaintiff's] business"  
11 qualify as trade secrets). Moreover, there is strong circumstantial evidence that Mr.  
12 Pettersson misappropriated the trade secrets in question, namely, his behavior in the days  
13 leading up to his resignation and his handling of both Navigant information and  
14 employees. (See Bajner Decl. ¶¶ 40-43, 48-49.)

15 Navigant also shows that absent a TRO, it will likely suffer irreparable harm from  
16 losing clients, employees, and proprietary information. The potential to lose customers,  
17 employees, goodwill, and revenue "certainly support[s] a finding of the possibility of  
18 irreparable harm." *Stuhlbarg Int'l Sales*, 240 F.3d at 841. Indeed, Navigant presents  
19 evidence that it has already lost two high-performing employees to Mr. Pettersson and  
20 Milliman. (See *id.* ¶¶ 40-41.) Moreover, "without a clear picture of what was taken and  
21 what may still be in Defendants' possession . . . [Navigant is] unable to take effective  
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1 steps to protect [itself].” *See Earthbound Corp.*, 2016 WL 4418013, at \*10. Thus, the  
2 court concludes that Navigant has demonstrated irreparable harm absent the TRO.

3       Lastly, Navigant shows that the balance of equities tips in its favor and that a TRO  
4 is in the public interest. Navigant seeks to protect its proprietary business information,  
5 whereas Defendants will suffer minimal prejudice from preserving the status quo.  
6 Moreover, “[t]heft of trade secrets, and allowing the thieves to retain and use the  
7 confidential information they purloined, undermines business development and stability;  
8 preventing such conduct is in the public’s interest.” *Earthbound Corp.*, 2016 WL  
9 4418013, at \*10. The court therefore concludes that the balance of equities favors  
10 Navigant and that a TRO is in the public interest.

11       In its accompanying motion for expedited discovery, Navigant seeks the  
12 preservation of electronic devices that may contain Navigant’s confidential information;  
13 documents or data that relate to this case; and any other evidence relevant to this matter.  
14 (Disc. Mot. at 6-7.) The court finds that the same analysis above applies with equal force  
15 to Navigant’s request for preservation of evidence. *See supra* § III. However, the  
16 remainder of Navigant’s discovery requests—which would require Defendants to turn  
17 over evidence such as emails and devices and to appear for deposition—do not address  
18 the same exigent circumstances. Thus, the court grants the motion in part and orders  
19 Defendants to preserve all evidence related to this matter. The court reserves ruling on  
20 the remainder of Navigant’s motion for expedited discovery until the hearing for  
21 preliminary injunction.

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1       The court may grant a TRO “only if the movant gives security in an amount that  
2 the court considers proper to pay the costs and damages sustained by any party found to  
3 have been wrongfully . . . restrained.” Fed. R. Civ. P. 65(c). However, a district court  
4 “may dispense with the filing of a bond when it concludes there is no realistic likelihood  
5 of harm to the defendant from enjoining his or her conduct.” *Jorgensen v. Cassiday*, 320  
6 F.3d 906, 919 (9th Cir. 2003). There is minimal prejudice to Defendants because the  
7 TRO simply preserves the status quo; it does not prevent Mr. Pettersson from continuing  
8 to work for Milliman. The court therefore finds that any potential costs and damages to  
9 Defendants are de minimis and declines to impose a bond.

10       Although Defendants have received notice of this lawsuit and motion (*see* Not. of  
11 Serv. (Dkt. # 2); Not. of Appearance (Dkt. # 13)), they have not had the opportunity to  
12 respond. *See* Local Rules W.D. Wash. LCR 65(b)(5) (“If the movant meets the  
13 requirements of Fed. R. Civ. P. 65(b), the court may grant the motion without awaiting a  
14 response.”); *cf.* Fed. R. Civ. P. 65(b)(1) (“The court may issue a temporary restraining  
15 order without written or oral notice to the adverse party or its attorney only if: (A)  
16 specific facts in an affidavit or a verified complaint clearly show that immediate and  
17 irreparable injury, loss, or damage will result to the movant before the adverse party can  
18 be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts  
19 made to give notice and the reasons why it should not be required.”). Navigant has  
20 demonstrated immediate and irreparable injury that would ensue before Defendants can  
21 be heard and have evidently gave notice to Defendants, as counsel for Mr. Pettersson has  
22 now appeared in the matter. (*See generally* Bajner Decl.; Not. of Serv.; Not. of

1 Appearance.) Accordingly, the court finds it appropriate to impose the TRO without first  
2 considering a response from Defendants.

3       The court will consider Navigant's motion and supporting documents as a motion  
4 for preliminary injunction and RENOTES that motion and the motion for expedited  
5 discovery for August 16, 2018.<sup>5</sup> *See* Fed. R. Civ. P. 65(b)(3) ("If the [TRO] is issued  
6 without notice, the motion for a preliminary injunction must be set for hearing at the  
7 earliest possible time . . ."). The court orders Defendants to respond and address both  
8 the motion for a preliminary injunction and the motion for expedited discovery, no later  
9 than Monday, August 13, 2018, at 5:00 p.m. No reply shall be filed. A hearing on the  
10 motion for preliminary injunction will be held on Thursday, August 16, 2018, at 10:30  
11 a.m. However, the parties may jointly propose a different schedule that provides a longer  
12 time for responsive briefing and a corresponding hearing date.

13                                  **IV. CONCLUSION**

14       Based on the foregoing analysis, the court GRANTS Navigant's motion for a TRO  
15 (Dkt. # 9) and RESTRAINS Defendants from using or disclosing Navigant's  
16 confidential, proprietary, or trade information; soliciting or contacting Navigant's clients  
17 or prospective clients with whom Mr. Pettersson worked; soliciting, inducing, or  
18 encouraging any Navigant employee to terminate or limit their employment with  
19 Navigant; or failing to preserve any evidence relating to this matter. Thus, the court  
20 GRANTS in part and RESERVES RULING in part on Navigant's motion for expedited

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<sup>5</sup> Pursuant to Federal Rule of Civil Procedure 65(b)(2), this TRO expires 14 days from  
the date of filing unless the court extends it. *See* Fed. R. Civ. P. 65(b)(2).

1 discovery (Dkt. # 11). Unless the court orders otherwise, the TRO expires 14 days from  
2 the date of this order. The court RENOTES Navigant's TRO motion (Dkt. # 9) as a  
3 motion for a preliminary injunction and Navigant's motion for expedited discovery for  
4 August 16, 2018. Lastly, the court SCHEDULES a preliminary injunction hearing for  
5 Thursday, August 16, 2018, at 10:30 a.m. The parties may jointly propose a schedule  
6 that provides a longer time for responsive briefing and a corresponding hearing date.

7 Dated this 8th day of August, 2018.

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10 JAMES L. ROBART  
11 United States District Judge  
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